IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 17809 of 2006(T)

AGAINST THE ORDER IN IA 1721/05 IN
OS.302/2005 of MUNSIFF COURT, MAVELIKKARA

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PETITIONER:

NABEEZATH BEEVI,
ALINTE THEKKETHIL, VETTIYAR VILLAGE,
MAVELIKKARA.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.SURAJ R.KUMAR

RESPONDENT:

ALI UMMA, ALINTE THEKKETHIL,
VETTIYAR VILLAGE,
MANGANKUZHI POST, MAVELIKKARA.

BY ADV. SRI.RINNY STEPHEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of rough sketch of the property indicating the lie of the property.

Ext. P2 true copy of the order dated 6.1.2006 passed by the learned Munsiff of Mavelikkara in I.A. 1721/2005 and I.A. No.1950/2005 in O.S. 302/05 of Munsiff Court, Mavelikkara.

Ext.P3 true copy of the common judgment dated 14.6.2006 passed by the learned Additional District Judge-I, Mavelikkara in CMA Nos. 6/2006 and 7/2006

M.N.Krishnan, J.

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W.P(C).No.17809 of 2006

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Dated this the 1st day of October, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Additional District Judge, Mavelikkars in C.M.A. Nos. 6 and 7 of 2006, which were preferred against the order in I.A.No.1721 of 2005 and I.A.No.1950 of 2005 of the Munsiff's Court, Mavelikkara. The trial court granted an order of injunction in favour of the plaintiff in I.A.No.1721 of 2005 and declined to grant any relief to the defendant in I.A.No.1950 of 2005.

2. To briefly understand the case, I refer to the sketch, Ext.P1 appended to the Writ Petition. The disputed property in the plaint is A1, and A2 is the portion which the defendant claims exclusive right by virtue of a purchase. Items 1 and 2 which are situated on the southern side of A1 and A2 came into the hands of one Iysha by virtue of a gift deed of 1946 as well as by virtue of mortgage in 1947 and 1950. It is also submitted that the

defendant has been using A1 as ingress and egress with the permission of the husband of the plaintiff. But the defendant would contend that the said right had been obtained by her by way of grant or by prescription and necessity. So, the usage of a pathway through A1 in any form is admitted by the parties. Whether it will be a right that has accrued upon the defendant which the plaintiff cannot restrain is a matter that has to be adjudicated in the suit. A2, according to the defendant, is purchased by him and had been annexed to A1 to have a wider pathway. The plaintiff now submits that A1 and A2 lie as one and therefore there cannot be any prevention from using A2 as well by her too.

3. I am not going into the merits and demerits of these contentions at this stage because a factual analysis is necessary on the strength of documents and evidence. Since the existence of a way and the usage is done by the parties, I hereby direct both the plaintiff and the defendant to use A1 and A2 as a passage and at the same time, I make it clear that both of them do not have any right to obstruct or construct or alter the physical features of A1 and A2 till the suit is finally disposed of or

in other words, the order passed by the trial court and confirmed by the appellate court is modified to this extent.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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